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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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12 KARMEN SMILEY,  
13 Plaintiff,  
14 v.  
15  
16 HOLOGIC, INC.,  
17 Defendant.  
18  
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Case No.: 16-cv-0158-WQH-MDD

**ORDER ON JOINT MOTION TO  
EXTEND DEADLINE TO  
ADDRESS DISCOVERY DISPUTE  
REGARDING SUPPLEMENTAL  
RESPONSES**

**[ECF NO. 67]**

20 Before the Court is the Joint Motion to Extend the Deadline to Address  
21 Discovery Dispute Re: Supplemental Discovery Responses filed on August 1,  
22 2017. (ECF No. 67). The Joint Motion is **GRANTED IN PART** as provided  
23 below.

24 LEGAL STANDARD

25 Rule 26(e)(1)(A), Fed. R. Civ. P., governs supplementation of disclosures  
26 and responses. It provides:

1 A party who has made a disclosure under Rule 26(a) –  
2 or who has responded to an interrogatory, request for  
3 production, or request for admission – must  
4 supplement or correct its disclosure or response . . . in a  
5 timely manner if the party learns that in some  
6 material respect the disclosure or response is  
7 incomplete or incorrect, and if the additional or  
8 corrective information has not otherwise been made  
9 known to the other parties during the discovery process  
10 or in writing....

11 Should a party fail to timely supplement a disclosure or response, Rule  
12 37(c)(1), Fed. R. Civ. P., provides the available remedies, as follows:

13 If a party fails to provide information or identify a  
14 witness as required by Rule 26(a) or (e), the party is  
15 not allowed to use that information or witness to  
16 supply evidence on a motion, at a hearing, or at a trial,  
17 unless the failure was substantially justified or is  
18 harmless.

19 Additional sanctions also are available for failing timely to supplement a  
20 disclosure or response. *See* Rule 37(c)(1)(A)-(C).

### 21 DISCUSSION

22 Discovery in this case closed on September 1, 2016. (ECF No. 10 ¶ 3).  
23 The time to bring before the Court any disputes regarding the adequacy of  
24 discovery responses is long past. According to the Joint Motion, Plaintiff has  
25 provided Defendant with a number of supplemental responses and Defendant  
26 has requested that Plaintiff provide further supplemental responses to  
previously served discovery. *See Joint Motion* at 2 (ECF No. 67 at 2). The  
parties appear to be meeting and conferring regarding the supplemental  
responses but seek leave of Court to bring any disputes regarding  
supplemental responses before the Court no later than September 15, 2017.  
*Id.* at 2-3.

1 Supplemental responses or disclosures are a one-way street: the burden  
2 is placed upon the producing party to supplement responses or disclosures in  
3 a timely manner upon finding that their initial responses or disclosures are  
4 materially incomplete or inaccurate. *See* Rule 26(e)(1)(A). The receiving  
5 party cannot compel supplemental disclosures or responses nor is there a  
6 procedural vehicle for the receiving party to challenge the sufficiency of a  
7 supplemental disclosure. The receiving party is limited to challenging  
8 supplemental disclosures or responses as untimely. *See* Rule 37(c)(1). The  
9 producing party carries the burden of convincing the Court that the  
10 supplemental disclosures or responses are timely and, if not, the untimeliness  
11 is substantially justified or harmless. *Id.*

12 The sufficiency of a supplemental response or disclosure only comes into  
13 play if a party seeks to introduce evidence that the other party claims was  
14 not previously disclosed in response to or in a supplement to a previous  
15 discovery request. That is a matter for the district court to determine in  
16 considering whether that evidence must be excluded under Rule 37(c)(1).

### 17 CONCLUSION

18 The Joint Motion is **GRANTED IN PART**. The parties may bring  
19 before this Court any disputes regarding the timeliness of supplemental  
20 disclosures or responses within thirty (30) days of the service of the  
21 supplemental disclosures or responses.

22 **IT IS SO ORDERED.**

23 Dated: August 2, 2017



Hon. Mitchell D. Dembin  
United States Magistrate Judge